

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Professional Liability Claims
SPONSOR(S): O'Toole
TIED BILLS: None IDEN./SIM. BILLS: None

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, DeZego, De La Paz.

SUMMARY ANALYSIS

Section 627.912, F.S., requires insurance companies, risk retention groups, and joint underwriting associations to file reports to the Office of Insurance Regulation (Office) regarding claims or actions for damages for personal injuries cause by alleged error, omission or negligence of health care providers and lawyers.

This bill clarifies existing law to define a claim and a closed claim for the purpose of reporting to the Office. A claim is considered closed under this bill if a judgment was entered against a health care provider and all appeals are exhausted, a settlement was reached against a health care provider, or a final payment on behalf of a health care provider was made for damages.

In addition, this bill provides that a no claim submission report must be filed with the Office by April 1st of each year when no claim or action for damages was closed within a calendar year.

This bill does not appear to impact state or local government revenues or expenditures.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Medical Malpractice*

Medical malpractice insurance covers doctors and other health care providers for liability claims arising from their treatment of patients. A claim for medical malpractice arises out of the rendering of, or the failure to render medical care services.<sup>1</sup> An action for medical malpractice is a tort or breach of contract claim for damages due to death, injury or monetary loss to any person arising out of any medical, dental, or surgical diagnosis or care by any provider of healthcare.<sup>2</sup>

An action for medical malpractice must be commenced within two years from the time the incident occurred or within two years from the time the incident is discovered, or should have been discovered with the exercise of due diligence. In no event may the action for medical malpractice be commenced more than four years from the occurrence, unless an action is brought on behalf of a minor on or before the child's eighth birthday.<sup>3</sup>

###### *Legal Malpractice*

Professional liability insurance for attorneys covers an attorney if a professional act or omission results in a loss or damage to a client. An attorney must possess the skill and knowledge possessed by other members of the profession, and must execute the business entrusted to his or her professional management with a reasonable degree of care, skill, and dispatch. If he or she fails to possess such care, skill, and dispatch, the he or she is responsible to a client for any resulting loss.<sup>4</sup>

A claim for professional malpractice against a member of The Florida Bar must be filed within a two year statute of limitations, which begins to run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.<sup>5</sup>

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<sup>1</sup> Section 766.106(1)(a), F.S.

<sup>2</sup> Section 95.11(4)(b), F.S.

<sup>3</sup> Section 95.11(4)(b), F.S.

<sup>4</sup> *Weekley v. Knight*, 116 Fla. 721, 156 So. 625 (1934).

<sup>5</sup> Section 95.11(4)(a), F.S.

## Legislative Reform

Prior to 2003, some experts claimed Florida was facing a "crisis" in the cost and availability of medical malpractice insurance in Florida. Premiums were increasing dramatically and the Florida Medical Malpractice Joint Underwriting Association (FMMJUA)<sup>6</sup> had increased from insuring 25 polices in December 2001 to 1,018 policies by June 2003. In 2003, CS/SB 2-D was signed into law.<sup>7</sup> This medical malpractice legislation comprehensively dealt with litigation reforms, patient safety issues, and insurance reforms.<sup>8</sup> Among its provisions, CS/SB 2-D revised the closed claim reporting requirements of s. 627.912, F.S.

### Effect of Bill

#### Current Law

Section 627.912, F.S., requires all types of insurance and self-insurance entities to file reports to the Office of Insurance Regulation (Office) regarding claims or actions for damages for personal injuries caused by alleged error, omission or negligence by insured doctors, other health care providers<sup>9</sup>, and lawyers. Reports must be filed when the claim resulted in the following:

- A final judgment in any amount;
- A settlement in any amount; or
- A final disposition of a medical malpractice claim resulting in no indemnity payment on the behalf of the insured.

Reports must be filed with the Office no later than 30 days after the occurrence of a claim or action for damages for personal injuries. The reports are posted on the Office's website,<sup>10</sup> and the Office prepares an annual report summarizing closed claim reports of medical malpractice in Florida.

#### Proposed Changes

This bill clarifies existing law to provide that a claim is a notice of intent to initiate litigation, a summons and complaint, or a written demand from either a person or his or her legal representative stating an intent to pursue an action for damages. This bill provides that only written claims which have been "closed" are required to be reported to the Office. A claim is considered closed under this bill if:

- A judgment was entered against a health care provider and all appeals have been exhausted or the time period for filing all appeals has expired;
- A settlement agreement was made on the behalf of a health care provider for at least \$1; or
- A final payment of money from an insurance company, self-insurance fund or joint underwriting association was made on behalf of any health care provider for damages.

Reports must be filed under this bill if the claim is closed and resulted in:

- A final judgment in any amount;
- A fully executed settlement agreement in any amount; or
- A final disposition of a medical malpractice claim resulting in no indemnity payment and \$2,500 or more paid in loss adjustment expenses on the behalf of the insured.

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<sup>6</sup> The FMMJUA provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the open market.

<sup>7</sup> The Florida Senate: Committee on Banking and Insurance. *Interim Project Report 2004-163*. January 2004.

<sup>8</sup> *Id.*

<sup>9</sup> Other health care providers include dentists, hospitals, health maintenance organizations (HMOs), abortion clinics, ambulatory surgical centers, and crisis stabilization units.

<sup>10</sup> See <http://www.flor.com/Liability/>. Last accessed February 19, 2009

Finally, this bill provides that when no claim or action for damages have been closed in a calendar year, then a no claim submission report must be filed with the Office by April 1st. If the reporting entity later discovers that a no claim submission report was filed in error, the reporting entity must promptly notify the Office of the error and take steps to remedy the error as directed by the Office.

**B. SECTION DIRECTORY:**

Section 1 amends s. 627.912(1), F.S., relating to professional liability claims.

Section 2 provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

This bill provides that written claims which have been "closed" are required to be reported to the Office. However, this bill provides that a closed claim is a judgment against, a settlement on the behalf of, or a final payment on the behalf of a health care provider. This bill does not provide a definition of a closed claim for the purpose of professional liability insurance for an attorney. Therefore, it is possible that a court may find that only claims relating to health care providers must be reported to the Office under this bill.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

N/A